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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMETRICS ELDRIDGE,

Defendant and Appellant.

E045769

(Super.Ct.No. FVI701712)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,
Judge. Affirmed.

Rex Williams, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, and Jeffrey J. Koch and
Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Demetrios Eldridge guilty of corporal injury to a spouse (Pen. Code,¹ § 273.5, subd. (a)), and also found true the allegation that he personally used a deadly weapon (§ 12022, subd. (b)(1)). The trial court sentenced defendant to the middle term of three years, plus one year for the weapon use enhancement, for a total term of four years in state prison.

On appeal, defendant contends that the trial court improperly instructed the jury with Judicial Council of California Criminal Jury Instructions, CALCRIM No. 372 on flight, since the instruction was unconstitutional and there was no substantial evidence to warrant the instruction. We affirm.

FACTUAL BACKGROUND

Defendant and Laneisha Trimble were married, but separated, and had two children. In the early morning hours of July 9, 2007, Trimble made a 911 call. She told the operator that defendant just ripped her clothes, wrapped a telephone cord around her neck, choked her, slammed the telephone in her face, and threatened to kill her. She said that defendant was “driving off” and gave his license plate number.

Officer Jason Grantham was dispatched to Trimble’s house to investigate in response to the call. At trial, Officer Grantham testified that when he arrived, he came into contact with Trimble and her friend, Goldie Lacoq. He did not see defendant there. Officer Grantham discussed with Trimble what had just occurred. She told him that defendant got upset with her after she told him she was glad they were separated. An

¹ All further statutory references will be to the Penal Code unless otherwise noted.

argument ensued when Trimble refused to give defendant a telephone that belonged to him. She said defendant struck her three times in the face, pushed her onto a bed, and straddled her. He threatened to kill her, and then he smacked her in the face with a console telephone, causing the telephone to shatter. He also wrapped the telephone cord around her neck and scratched her neck. Officer Grantham observed that Trimble's lips and face were swollen, and that she had a laceration on the left corner of her mouth, as well as lacerations on her neck.

Officer Grantham also interviewed Lacoq, who said she lived at Trimble's home and heard noises that morning. She then found defendant and Trimble arguing. Lacoq told Officer Grantham that defendant was apparently attempting to assault Trimble.

At trial, Trimble changed her story and testified that she got into a physical fight with defendant's girlfriend on July 9, 2007, and that she told defendant she was happy they were separated. Trimble testified that she did tell Deputy Grantham that defendant became enraged, he pushed her numerous times and struck her three times, and she might have told the officer that defendant threatened to kill her. However, Trimble testified that none of those things were true, she just said those things because she wanted to get defendant in trouble. She was upset that defendant brought his girlfriend to her house. Trimble said she had scratches on her neck and an injury to her lip because defendant's girlfriend threw the telephone at her.

Trimble further testified that she had gone to visit defendant while he was in jail on the current case, and that she called him on the telephone about one week prior to the

trial because she “[n]eeded some money for [her] kids.” She further admitted that she wanted to see defendant found not guilty because she needed his financial support for their two children. She said she felt guilty that defendant was in trouble because of her prior statements to Officer Grantham.

ANALYSIS

I. The Trial Court Properly Gave the Flight Instruction

A. CALCRIM No. 372 Did Not Violate Defendant’s Constitutional Rights

Defendant contends the flight instruction, CALCRIM No. 372, violated his rights to due process and a jury trial, because it allegedly eliminated the presumption of innocence, relieved the prosecution of the burden to prove the offense beyond a reasonable doubt, and deprived him of a jury verdict. He specifically contends the flight instruction violated his constitutional rights, because the phrase “after the crime was committed” presumes the crime was committed, “and from there tells the jury what inferences it may draw from the defendant’s conduct.” We reject defendant’s contention.²

Section 1127c provides: “In any criminal trial or proceeding where evidence of flight of a defendant is relied upon as tending to show guilt, the court shall instruct the jury substantially as follows: [¶] The flight of a person immediately after the

² According to the Attorney General, defendant has forfeited this argument because defendant did not object in the trial court on this basis. Defendant’s claim, however, is that the instruction violated his right to due process of law. The claim therefore “is not of the type that must be preserved by objection.” (*People v. Smithey* (1999) 20 Cal.4th 936, 976, fn. 7.)

commission of a crime, or after he is accused of a crime that has been committed, is not sufficient in itself to establish his guilt, but is a fact which, if proved, the jury may consider in deciding his guilt or innocence. The weight to which such circumstance is entitled is a matter for the jury to determine.” The trial court here gave CALCRIM No. 372, which states: “If the defendant fled immediately after the crime was committed, that conduct may show that he was aware of his guilt. If you conclude that the defendant fled, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled cannot prove guilt by itself.”

The court here properly instructed the jury with CALCRIM No. 372. First, “[s]ection 1127c requires a trial court in any criminal proceeding to instruct as to flight where evidence of flight is relied upon as tending to show guilt.” (*People v. Carter* (2005) 36 Cal.4th 1114, 1182, fn. omitted.) In his closing argument, the prosecutor here relied on evidence of flight to show defendant’s guilt. The prosecutor stated that defendant fled after he committed the crime because defendant knew he had done something wrong, and the fact that defendant did flee showed that he knew he was guilty. The court thus properly instructed the jury with CALCRIM No. 372, since the instruction is essentially the one prescribed by section 1127c. (*People v. Wier* (1937) 20 Cal.App.2d 91, 94.)

Second, CALCRIM No. 372 did not assume defendant committed the charged crime. Instead, the instruction merely permitted the jury to consider evidence of flight in deciding defendant’s guilt or innocence. (See *People v. Carter, supra*, 36 Cal.4th at p.

1182.) CALCRIM No. 372 specifically advised the jury that if it concluded defendant fled or tried to flee, it was up to the jury “to decide the meaning and importance of that conduct.” The instruction made clear that “evidence that the defendant fled cannot prove guilt by itself.” Thus, the instruction did not create an unconstitutional presumption of guilt. (See *People v. Smithey*, *supra*, 20 Cal.4th at p. 983 [Supreme Court rejected the defendant’s argument that CALJIC No. 2.52, the previous standard flight instruction, created an unconstitutional presumption of guilt].)

Moreover, in direct contrast to defendant’s claims that the presumption of innocence was eliminated and the prosecution was relieved of the burden to prove the offense beyond a reasonable doubt, the jury was instructed pursuant to CALCRIM No. 200 as follows: “You must decide what the facts are. It is up to all of you, and you alone, to decide what happened, based only on the evidence that has been presented to you in this trial. [¶] . . . [¶] Some of these instructions may not apply, depending on your findings about the facts of the case. Do not assume just because I give a particular instruction that I am suggesting anything about the facts. After you have decided what the facts are, follow the instructions that do apply to the facts as you find them.” The court also instructed the jury with CALCRIM No. 220, which states: “A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt.” “When the proper admonition is given to the jury by the court, as here, it must be presumed that the jury heeded the admonition. [Citations.]” (*People v. Robles* (1962) 207 Cal.App.2d 891, 897.)

B. *There Was Sufficient Evidence to Support the Flight Instruction*

Defendant further contends the trial court erred in giving CALCRIM No. 372 because there was no evidence that he actually fled. We disagree.

“In general, a flight instruction “is proper where the evidence shows that the defendant departed the crime scene under circumstances suggesting that his movement was motivated by a consciousness of guilt.” [Citations.] Evidence that a defendant left the scene is not alone sufficient; instead, the circumstances of departure must *suggest* ‘a purpose to avoid being observed or arrested.’ [Citations.] To obtain the instruction, the prosecution *need not prove the defendant in fact fled, i.e., departed the scene to avoid arrest*, only that a jury *could* find the defendant fled and permissibly infer a consciousness of guilt from the evidence. [Citation.]” (*People v. Bonilla* (2007) 41 Cal.4th 313, 328, first italics added.)

Here, as in *Bonilla*, the prosecution was not required to establish that defendant actually fled, but only that there was evidence from which a jury *could find that he fled* and infer from that flight defendant’s consciousness of guilt. There is no dispute defendant immediately left the scene, or that Trimble called 911 immediately after defendant and his girlfriend left. The evidence of the 911 call showed that Trimble told the operator that defendant had just beaten her up and was “driving off.” Trimble then said, “Please, get him, he’s running off” The circumstances of defendant’s departure at least *suggested* that he was trying to avoid being observed or arrested. (*People v.*

Bonilla, supra, 41 Cal.4th at p. 328.) Consequently, it was not error to give a flight instruction.

II. Any Error Was Harmless

Ultimately, if the court did err in giving the flight instruction, the error was not prejudicial. There was strong evidence of defendant's guilt. Both the evidence of the 911 call and Officer Grantham's testimony of what Trimble told him supported defendant's conviction. Specifically, Officer Grantham testified that Trimble said defendant struck her three times in the face, pushed her onto a bed, threatened to kill her, smacked her in the face with a telephone, wrapped the telephone cord around her neck, and scratched her neck. In addition, Officer Grantham observed injuries that were consistent with Trimble's account of being assaulted, namely, that her lips and face were swollen, and that she had lacerations on her mouth and neck.

Furthermore, CALCRIM No. 372 instructed the jury that it should decide not only whether defendant had fled ("*If you conclude that the defendant fled,*" italics added), but also "the meaning and importance of that conduct." Thus, there was nothing in the court's instruction that *required* the jury to consider defendant's flight as evidence of his guilt. As the instruction plainly explained, the meaning of defendant's conduct was for the jury to decide. The jury could have chosen not to regard any evidence of flight at all.

In light of the evidence of defendant's guilt, it is not reasonably probable a result more favorable to defendant would have been reached had the flight instruction not been

given. (*People v. Watson* (1956) 46 Cal.2d 818, 836; see also *People v. Silva* (1988) 45 Cal.3d 604, 628.)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

KING

J.

MILLER

J.